

AMENDED IN ASSEMBLY JANUARY 17, 2012

AMENDED IN ASSEMBLY JANUARY 5, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 236

Introduced by Assembly Member Swanson

February 3, 2011

An act *to add and repeal Sections 17053.81 and 23625 of, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 236, as amended, Swanson. Income taxes: credits: qualified employees.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, ~~in the amount of \$3,000 for each full-time employee hired by a qualified employer. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.~~ *an amount equal to \$3,000 for each net increase of full-time employee hired during the taxable year by a qualified employer, as defined. Existing law caps the total amount of that credit that may be allocated under those provisions to \$400,000,000.*

This bill would reduce the total amount of credit that may be allocated under those laws to \$350,000,000.

This bill would also authorize a credit against those taxes for each taxable year beginning on or after January 1, 2012, in an amount equal to \$5,000, or a fraction thereof, for each net increase of full-time

employees, that are paid no less than the state minimum wage, hired during the taxable year by a qualified employer. This bill would cap the total amount of credit that may be allocated to \$50,000,000.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

~~This bill would, under both laws, for taxable years beginning on or after January 1, 2012, authorize a credit for qualified employers in the amount of \$5,000 for each net increase in qualified full-time employees who have been unemployed for 12 or more consecutive months, as specified.~~

This bill would take effect immediately as a tax levy.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.80 of the Revenue and Taxation
2 Code, as added by Section 3 of Chapter 10 of the Third
3 Extraordinary Session of the Statutes of 2009, is repealed.

4 SEC. 2. ~~Section 17053.80 of the Revenue and Taxation Code,~~
5 ~~as added by Section 3 of Chapter 17 of the Third Extraordinary~~
6 ~~Session of the Statutes of 2009, is amended to read:~~

7 ~~17053.80. (a) (1) Except as provided in paragraph (2), for~~
8 ~~each taxable year beginning on or after January 1, 2009, there shall~~
9 ~~be allowed as a credit against the "net tax," as defined in Section~~
10 ~~17039, three thousand dollars (\$3,000) for each net increase in~~
11 ~~qualified full-time employees, as specified in subdivision (c), hired~~
12 ~~during the taxable year by a qualified employer.~~

13 ~~(2) (A) For each taxable year beginning on or after January 1,~~
14 ~~2012, there shall be allowed as a credit against the "net tax," as~~
15 ~~defined in Section 17039, five thousand dollars (\$5,000) for each~~
16 ~~net increase in qualified full-time employees, as specified in~~
17 ~~subdivision (c), hired during the taxable year by a qualified~~
18 ~~employer.~~

19 ~~(B) For purposes of this paragraph, a "qualified full-time~~
20 ~~employee" means an individual who meets the criteria of paragraph~~
21 ~~(2) of subdivision (b), and who has been unemployed for 12 or~~

1 ~~more consecutive months prior to being hired by a qualified~~
2 ~~employer.~~

3 ~~(b) For purposes of this section:~~

4 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
5 ~~to divorce, or any other transfer, whether or not for consideration.~~

6 ~~(2) “Qualified full-time employee” means either of the~~
7 ~~following:~~

8 ~~(A) A qualified employee who was paid qualified wages by the~~
9 ~~qualified employer for services of not less than an average of 35~~
10 ~~hours per week.~~

11 ~~(B) A qualified employee who was a salaried employee and~~
12 ~~was paid compensation during the taxable year for full-time~~
13 ~~employment, within the meaning of Section 515 of the Labor Code,~~
14 ~~by the qualified employer.~~

15 ~~(3) A “qualified employee” shall not include any of the~~
16 ~~following:~~

17 ~~(A) An employee certified as a qualified employee in an~~
18 ~~enterprise zone designated in accordance with Chapter 12.8~~
19 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
20 ~~Government Code.~~

21 ~~(B) An employee certified as a qualified disadvantaged~~
22 ~~individual in a manufacturing enhancement area designated in~~
23 ~~accordance with Section 7073.8 of the Government Code.~~

24 ~~(C) An employee certified as a qualified employee in a targeted~~
25 ~~tax area designated in accordance with Section 7097 of the~~
26 ~~Government Code.~~

27 ~~(D) An employee certified as a qualified disadvantaged~~
28 ~~individual or a qualified displaced employee in a local agency~~
29 ~~military base recovery area (LAMBRA) designated in accordance~~
30 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
31 ~~7 of Title 1 of the Government Code.~~

32 ~~(E) An employee whose wages are included in calculating any~~
33 ~~other credit allowed under this part.~~

34 ~~(4) A “qualified employer” means a taxpayer that, as of the last~~
35 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
36 ~~employees.~~

37 ~~(5) “Qualified wages” means wages subject to Division 6~~
38 ~~(commencing with Section 13000) of the Unemployment Insurance~~
39 ~~Code.~~

40 ~~(6) “Annual full-time equivalent” means either of the following:~~

1 (A) In the case of a full-time employee paid hourly qualified
2 wages, “annual full-time equivalent” means the total number of
3 hours worked for the taxpayer by the employee (not to exceed
4 2,000 hours per employee) divided by 2,000.

5 (B) In the case of a salaried full-time employee, “annual
6 full-time equivalent” means the total number of weeks worked for
7 the taxpayer by the employee divided by 52.

8 (c) The net increase in qualified full-time employees of a
9 qualified employer shall be determined as provided by this
10 subdivision:

11 (1) (A) The net increase in qualified full-time employees shall
12 be determined on an annual full-time equivalent basis by
13 subtracting from the amount determined in subparagraph (C) the
14 amount determined in subparagraph (B):

15 (B) The total number of qualified full-time employees employed
16 in the preceding taxable year by the taxpayer and by any trade or
17 business acquired by the taxpayer during the preceding taxable
18 year.

19 (C) The total number of full-time employees employed in the
20 current taxable year by the taxpayer and by any trade or business
21 acquired during the current taxable year.

22 (2) For taxpayers who first commence doing business in this
23 state during the taxable year, the number of full-time employees
24 for the immediately preceding prior taxable year shall be zero.

25 (d) In the case where the credit allowed by this section exceeds
26 the “net tax,” the excess may be carried over to reduce the “net
27 tax” in the following year, and the succeeding seven years if
28 necessary, until the credit is exhausted.

29 (e) Any deduction otherwise allowed under this part for qualified
30 wages shall not be reduced by the amount of the credit allowed
31 under this section.

32 (f) For purposes of this section:

33 (1) All employees of the trades or businesses that are treated as
34 related under either Section 267, 318, or 707 of the Internal
35 Revenue Code shall be treated as employed by a single taxpayer.

36 (2) In determining whether the taxpayer has first commenced
37 doing business in this state during the taxable year, the provisions
38 of subdivision (f) of Section 17276, without application of
39 paragraph (7) of that subdivision, shall apply.

1 ~~(g) (1) (A) Credit under this section and Section 23623 shall~~
2 ~~be allowed only for credits claimed on timely filed original returns~~
3 ~~received by the Franchise Tax Board on or before the cutoff date~~
4 ~~established by the Franchise Tax Board.~~

5 ~~(B) For purposes of this paragraph, the cutoff date shall be the~~
6 ~~last day of the calendar quarter within which the Franchise Tax~~
7 ~~Board estimates it will have received timely filed original returns~~
8 ~~claiming credits under this section and Section 23623 that~~
9 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
10 ~~for all taxable years.~~

11 ~~(2) The date a return is received shall be determined by the~~
12 ~~Franchise Tax Board.~~

13 ~~(3) (A) The determinations of the Franchise Tax Board with~~
14 ~~respect to the cutoff date, the date a return is received, and whether~~
15 ~~a return has been timely filed for purposes of this subdivision may~~
16 ~~not be reviewed in any administrative or judicial proceeding.~~

17 ~~(B) Any disallowance of a credit claimed due to a determination~~
18 ~~under this subdivision, including the application of the limitation~~
19 ~~specified in paragraph (1), shall be treated as a mathematical error~~
20 ~~appearing on the return. Any amount of tax resulting from such~~
21 ~~disallowance may be assessed by the Franchise Tax Board in the~~
22 ~~same manner as provided by Section 19051.~~

23 ~~(4) The Franchise Tax Board shall periodically provide notice~~
24 ~~on its Web site with respect to the amount of credit under this~~
25 ~~section and Section 23623 claimed on timely filed original returns~~
26 ~~received by the Franchise Tax Board.~~

27 ~~(h) (1) The Franchise Tax Board may prescribe rules,~~
28 ~~guidelines, or procedures necessary or appropriate to carry out the~~
29 ~~purposes of this section, including any guidelines regarding the~~
30 ~~limitation on total credits allowable under this section and Section~~
31 ~~23623 and guidelines necessary to avoid the application of~~
32 ~~paragraph (2) of subdivision (f) through splitups, shell corporations,~~
33 ~~partnerships, tiered ownership structures, or otherwise.~~

34 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
35 ~~Division 3 of Title 2 of the Government Code does not apply to~~
36 ~~any standard, criterion, procedure, determination, rule, notice, or~~
37 ~~guideline established or issued by the Franchise Tax Board~~
38 ~~pursuant to this section.~~

~~(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cutoff date, and as of that December 1 is repealed.~~

SEC. 2. *Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:*

17053.80. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the “net tax,” as defined in Section 17039, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) “Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) “Qualified full-time employee” means:

(A) A qualified employee who was paid qualified wages *during the taxable year* by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

(3) A “qualified employee” shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

1 (E) An employee whose wages are included in calculating any
2 other credit allowed under this part.

3 (F) *A full-time employee for which a credit is allowed under*
4 *Section 17053.81 or 23625.*

5 (4) “Qualified employer” means a taxpayer that, as of the last
6 day of the preceding taxable year, employed a total of 20 or fewer
7 employees.

8 (5) “Qualified wages” means wages subject to Division 6
9 (commencing with Section 13000) of the Unemployment Insurance
10 Code.

11 (6) “Annual full-time equivalent” means either of the following:

12 (A) In the case of a full-time employee paid hourly qualified
13 wages, “annual full-time equivalent” means the total number of
14 hours worked for the taxpayer by the employee (not to exceed
15 2,000 hours per employee) divided by 2,000.

16 (B) In the case of a salaried full-time employee, “annual
17 full-time equivalent” means the total number of weeks worked for
18 the taxpayer by the employee divided by 52.

19 (c) The net increase in qualified full-time employees of a
20 qualified employer shall be determined as provided by this
21 subdivision:

22 (1) (A) The net increase in qualified full-time employees shall
23 be determined on an annual full-time equivalent basis by
24 subtracting from the amount determined in subparagraph (C) the
25 amount determined in subparagraph (B).

26 (B) The total number of qualified full-time employees employed
27 in the preceding taxable year by the taxpayer and by any trade or
28 business acquired by the taxpayer during the current taxable year.

29 (C) The total number of full-time employees employed in the
30 current taxable year by the taxpayer and by any trade or business
31 acquired during the current taxable year.

32 (2) For taxpayers who first commence doing business in this
33 state during the taxable year, the number of full-time employees
34 for the immediately preceding prior taxable year shall be zero.

35 (d) In the case where the credit allowed by this section exceeds
36 the “net tax,” the excess may be carried over to reduce the “net
37 tax” in the following year, and succeeding seven years if necessary,
38 until the credit is exhausted.

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section ~~17276~~ 17276.20, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total ~~four hundred million dollars (\$400,000,000)~~ *three hundred fifty million dollars (\$350,000,000)* for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines or procedures necessary or appropriate to carry out the purposes

1 of this section, including any guidelines regarding the limitation
2 on total credits allowable under this section and Section 23623
3 and guidelines necessary to avoid the application of paragraph (2)
4 of subdivision (f) through split-ups, shell corporations, partnerships,
5 tiered ownership structures, or otherwise.

6 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
7 Division 3 of Title 2 of the Government Code does not apply to
8 any standard, criterion, procedure, determination, rule, notice, or
9 guideline established or issued by the Franchise Tax Board
10 pursuant to this section.

11 (i) This section shall remain in effect only until December 1 of
12 the calendar year after the year of the cut-off date, and as of that
13 December 1 is repealed.

14 *SEC. 3. Section 17053.81 is added to the Revenue and Taxation*
15 *Code, to read:*

16 *17053.81. (a) (1) For each taxable year beginning on or after*
17 *January 1, 2012, there shall be allowed as a credit against the*
18 *“net tax,” as defined in Section 17039, the amount specified in*
19 *paragraph (2).*

20 *(2) For each qualified full-time employee hired during the*
21 *taxable year by a qualified employer, the credit shall be equal to*
22 *the lesser of five thousand dollars (\$5,000), or five thousand dollars*
23 *(\$5,000) multiplied by a fraction, the numerator of which shall be*
24 *the number of calendar months the qualified full-time employee*
25 *is employed during the taxable year, and the denominator shall*
26 *be the total number of calendar months in the taxable year.*

27 *(b) For purposes of this section:*

28 *(1) “Qualified employer” means an employer that, as of the*
29 *last day of the preceding taxable year, employed a total of 20 or*
30 *fewer employees, and has a net increase in full-time employees,*
31 *defined as those employees working 2,000 hours per year, for the*
32 *current taxable year.*

33 *(A) The net increase in the number of full-time employees shall*
34 *be determined by subtracting the total number of full-time*
35 *employees, defined as 2,000 paid hours per employee per year,*
36 *the employer employed in this state on the last day of the preceding*
37 *taxable year from the total number of full-time employees the*
38 *employer employed in this state as of the last day of the current*
39 *taxable year. For employers who first commence doing business*
40 *in this state during either the current or preceding taxable year,*

1 the number of employees for the taxable year prior to first
2 commencing business operations shall be zero. If the employer
3 has a net increase in the number of full-time employees in this
4 state, the credit shall be allowed only if one or more full-time
5 employees was a qualified employee.

6 (B) The total number of full-time employees shall equal the sum
7 of both of the following:

8 (i) The total number of hours worked by all full-time employees
9 for the taxpayer by employees, not to exceed 2,000 hours per
10 employee, who are paid an hourly wage divided by 2,000.

11 (ii) The total number of months worked for the employer by
12 employees who are salaried employees divided by 12.

13 (C) In the case of an employer that first commences doing
14 business during the taxable year, for purposes of clauses (i) and
15 (ii) of subparagraph (B), the divisors “2,000” and “12” shall be
16 multiplied by a fraction, the numerator of which is the number of
17 months of the taxable year that the employer was doing business
18 and the denominator of which is 12.

19 (2) “Qualified employee” means an individual who was
20 unemployed for 12 or more consecutive months immediately prior
21 to commencing employment with the qualified employer in the
22 taxable year, and who was employed by the qualified employer on
23 a full-time basis, paid qualified wages, and employed as of the last
24 day of the taxable year. For purposes of this paragraph, an
25 individual “employed on a full-time basis” shall mean an employee
26 who either performed services for the qualified employer for not
27 less than an average of 35 hours per week, or who was a salaried
28 employee and was paid compensation for full-time employment,
29 within the meaning of Section 515 of the Labor Code.

30 (3) A “qualified employee” shall not include any of the
31 following:

32 (A) An employee certified as a qualified employee in an
33 enterprise zone designated in accordance with Chapter 12.8
34 (commencing with Section 7070) of Division 7 of Title 1 of the
35 Government Code.

36 (B) An employee certified as a qualified disadvantaged
37 individual in a manufacturing enhancement area designated in
38 accordance with Section 7073.8 of the Government Code.

1 (C) An employee certified as a qualified employee in a targeted
2 tax area designated in accordance with Section 7097 of the
3 Government Code.

4 (D) An employee certified as a qualified disadvantaged
5 individual or a qualified displaced employee in a local agency
6 military base recovery area (LAMBRA) designated in accordance
7 with Chapter 12.97 (commencing with Section 7105) of Division
8 7 of Title 1 of the Government Code.

9 (E) An employee whose period of employment was used to
10 calculate a credit under Section 17053.80 or 23623.

11 (F) (i) An employee whose wages are included in calculating
12 any other credit allowed under this part.

13 (ii) Clause (i) shall not apply in any case in which the qualified
14 employer elects to include wages otherwise qualifying for the credit
15 allowed under this section or Section 23625 in claiming a credit
16 under another section under this part or Part 11 (commencing
17 with Section 23001) in lieu of claiming a credit under either this
18 section or Section 23625.

19 (4) "Qualified wages" means wages subject to Division 6
20 (commencing with Section 13000) of the Unemployment Insurance
21 Code that are no less than the state minimum wage as set forth in
22 Chapter 1 (commencing with Section 1171) of Part 4 of Division
23 2 of the Labor Code.

24 (c) (1) (A) A credit under this section and Section 23625 shall
25 be allowed only for credits claimed on timely filed original returns
26 received by the Franchise Tax Board on or before the cut-off date
27 established by the Franchise Tax Board and shall be allocated on
28 a first-come-first-served basis.

29 (B) For purposes of this paragraph, the cut-off date shall be
30 the last day of the calendar quarter within which the Franchise
31 Tax Board estimates it will have received timely filed original
32 returns claiming credits under this section and Section 23625 that
33 cumulatively total fifty million dollars (\$50,000,000) for all taxable
34 years.

35 (2) The date a return is received shall be determined by the
36 Franchise Tax Board.

37 (3) (A) The determinations of the Franchise Tax Board with
38 respect to the cut-off date, the date a return is received, and
39 whether a return has been timely filed for purposes of this

1 subdivision shall not be reviewed in any administrative or judicial
2 proceeding.

3 (B) Any disallowance of a credit claimed due to a determination
4 under this subdivision, including the application of the limitation
5 specified in paragraph (1), shall be treated as a mathematical
6 error appearing on the return. Any amount of tax resulting from
7 such disallowance shall be assessed by the Franchise Tax Board
8 in the same manner as provided by Section 19051.

9 (4) The Franchise Tax Board shall periodically provide notice
10 on its Internet Web site with respect to the amount of credit under
11 this section and Section 23625 claimed on timely filed original
12 returns received by the Franchise Tax Board.

13 (d) For purposes of this section:

14 (1) All employees of the trades or businesses that are treated
15 as related under either Section 267, 318, or 707 of the Internal
16 Revenue Code shall be treated as employed by a single taxpayer.

17 (2) In determining whether the employer has first commenced
18 doing business in this state during a taxable year, the provisions
19 of subdivision (f) of Section 17276.20, without the application of
20 paragraph (7) of that subdivision, shall apply.

21 (e) In the case where the credit allowed under this section
22 exceeds the "net tax," the excess credit may be carried over to
23 reduce the "net tax" in the following taxable year, and succeeding
24 eight taxable years, if necessary, until the credit has been
25 exhausted.

26 (f) (1) The Franchise Tax Board may prescribe rules,
27 guidelines, or procedures necessary or appropriate to carry out
28 the purposes of this section, including any guidelines regarding
29 the limitation on total credits allowable under this section and
30 Section 23625.

31 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
32 Division 3 of Title 2 of the Government Code does not apply to
33 any standard, criterion, procedure, determination, rule, notice, or
34 guideline established or issued by the Franchise Tax Board
35 pursuant to this section.

36 (g) This section shall remain in effect only until December 1 of
37 the calendar year after the year of the cut-off date, and as of that
38 December 1 is repealed.

1 ~~SEC. 3.~~

2 ~~SEC. 4.~~ Section 23623 of the Revenue and Taxation Code, as
3 added by Section 8 of Chapter 10 of the Third Extraordinary
4 Session of the Statutes of 2009, is repealed.

5 ~~SEC. 4.~~ Section 23623 of the Revenue and Taxation Code, as
6 added by Section 8 of Chapter 17 of the Third Extraordinary
7 Session of the Statutes of 2009, is amended to read:

8 23623. (a) (1) Except as provided in paragraph (2), for each
9 taxable year beginning on or after January 1, 2009, there shall be
10 allowed as a credit against the “tax,” as defined in Section 23036,
11 three thousand dollars (\$3,000) for each net increase in qualified
12 full-time employees, as specified in subdivision (c), hired during
13 the taxable year by a qualified employer.

14 (2) (A) For each taxable year beginning on or after January 1,
15 2012, there shall be allowed as a credit against the “tax,” as defined
16 in Section 23036, five thousand dollars (\$5,000) for each net
17 increase in qualified full-time employees, as specified in
18 subdivision (c), hired during the taxable year by a qualified
19 employer.

20 (B) For purposes of this paragraph, a “qualified full-time
21 employee” means an individual who meets the criteria of paragraph
22 (2) of subdivision (b), and who has been unemployed for 12 or
23 more consecutive months prior to being hired by a qualified
24 employer.

25 (b) For purposes of this section:

26 (1) “Acquired” includes any gift, inheritance, transfer incident
27 to divorce, or any other transfer, whether or not for consideration.

28 (2) “Qualified full-time employee” means:

29 (A) A qualified employee who was paid qualified wages during
30 the taxable year by the qualified employer for services of not less
31 than an average of 35 hours per week.

32 (B) A qualified employee who was a salaried employee and
33 was paid compensation during the taxable year for full-time
34 employment, within the meaning of Section 515 of the Labor Code,
35 by the qualified employer.

36 (3) A “qualified employee” shall not include any of the
37 following:

38 (A) An employee certified as a qualified employee in an
39 enterprise zone designated in accordance with Chapter 12.8

1 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
2 ~~Government Code.~~

3 ~~(B) An employee certified as a qualified disadvantaged~~
4 ~~individual in a manufacturing enhancement area designated in~~
5 ~~accordance with Section 7073.8 of the Government Code.~~

6 ~~(C) An employee certified as a qualified employee in a targeted~~
7 ~~tax area designated in accordance with Section 7097 of the~~
8 ~~Government Code.~~

9 ~~(D) An employee certified as a qualified disadvantaged~~
10 ~~individual or a qualified displaced employee in a local agency~~
11 ~~military base recovery area (LAMBRA) designated in accordance~~
12 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
13 ~~7 of Title 1 of the Government Code.~~

14 ~~(E) An employee whose wages are included in calculating any~~
15 ~~other credit allowed under this part.~~

16 ~~(4) A “qualified employer” means a taxpayer that, as of the last~~
17 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
18 ~~employees.~~

19 ~~(5) “Qualified wages” means wages subject to Division 6~~
20 ~~(commencing with Section 13000) of the Unemployment Insurance~~
21 ~~Code.~~

22 ~~(6) “Annual full-time equivalent” means either of the following:~~

23 ~~(A) In the case of a full-time employee paid hourly qualified~~
24 ~~wages, “annual full-time equivalent” means the total number of~~
25 ~~hours worked for the taxpayer by the employee (not to exceed~~
26 ~~2,000 hours per employee) divided by 2,000.~~

27 ~~(B) In the case of a salaried full-time employee, “annual~~
28 ~~full-time equivalent” means the total number of weeks worked for~~
29 ~~the taxpayer by the employee divided by 52.~~

30 ~~(e) The net increase in qualified full-time employees of a~~
31 ~~qualified employer shall be determined as provided by this~~
32 ~~subdivision:~~

33 ~~(1) (A) The net increase in qualified full-time employees shall~~
34 ~~be determined on an annual full-time equivalent basis by~~
35 ~~subtracting from the amount determined in subparagraph (C) the~~
36 ~~amount determined in subparagraph (B).~~

37 ~~(B) The total number of qualified full-time employees employed~~
38 ~~in the preceding taxable year by the taxpayer and by any trade or~~
39 ~~business acquired by the taxpayer during the preceding taxable~~
40 ~~year.~~

1 ~~(C) The total number of full-time employees employed in the~~
2 ~~current taxable year by the taxpayer and by any trade or business~~
3 ~~acquired during the current taxable year.~~

4 ~~(2) For taxpayers who first commence doing business in this~~
5 ~~state during the taxable year, the number of full-time employees~~
6 ~~for the immediately preceding prior taxable year shall be zero.~~

7 ~~(d) In the case where the credit allowed by this section exceeds~~
8 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
9 ~~the following year, and the succeeding seven years if necessary,~~
10 ~~until the credit is exhausted.~~

11 ~~(e) Any deduction otherwise allowed under this part for qualified~~
12 ~~wages shall not be reduced by the amount of the credit allowed~~
13 ~~under this section.~~

14 ~~(f) For purposes of this section:~~

15 ~~(1) All employees of the trades or businesses that are treated as~~
16 ~~related under either Section 267, 318, or 707 of the Internal~~
17 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

18 ~~(2) In determining whether the taxpayer has first commenced~~
19 ~~doing business in this state during the taxable year, the provisions~~
20 ~~of subdivision (f) of Section 17276, without application of~~
21 ~~paragraph (7) of that subdivision, shall apply.~~

22 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~
23 ~~be allowed only for credits claimed on timely filed original returns~~
24 ~~received by the Franchise Tax Board on or before the cutoff date~~
25 ~~established by the Franchise Tax Board.~~

26 ~~(B) For purposes of this paragraph, the cutoff date shall be the~~
27 ~~last day of the calendar quarter within which the Franchise Tax~~
28 ~~Board estimates it will have received timely filed original returns~~
29 ~~claiming credits under this section and Section 17053.80 that~~
30 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
31 ~~for all taxable years.~~

32 ~~(2) The date a return is received shall be determined by the~~
33 ~~Franchise Tax Board.~~

34 ~~(3) (A) The determinations of the Franchise Tax Board with~~
35 ~~respect to the cutoff date, the date a return is received, and whether~~
36 ~~a return has been timely filed for purposes of this subdivision may~~
37 ~~not be reviewed in any administrative or judicial proceeding.~~

38 ~~(B) Any disallowance of a credit claimed due to a determination~~
39 ~~under this subdivision, including the application of the limitation~~
40 ~~specified in paragraph (1), shall be treated as a mathematical error~~

1 appearing on the return. Any amount of tax resulting from such
2 disallowance may be assessed by the Franchise Tax Board in the
3 same manner as provided by Section 19051.

4 (4) The Franchise Tax Board shall periodically provide notice
5 on its Web site with respect to the amount of credit under this
6 section and Section 17053.80 claimed on timely filed original
7 returns received by the Franchise Tax Board.

8 (h) (1) The Franchise Tax Board may prescribe rules,
9 guidelines, or procedures necessary or appropriate to carry out the
10 purposes of this section, including any guidelines, regarding the
11 limitation on total credits allowable under this section and Section
12 17053.80 and guidelines necessary to avoid the application of
13 paragraph (2) of subdivision (f) through splitups, shell corporations,
14 partnerships, tiered ownership structures, or otherwise.

15 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
16 Division 3 of Title 2 of the Government Code does not apply to
17 any standard, criterion, procedure, determination, rule, notice, or
18 guideline established or issued by the Franchise Tax Board
19 pursuant to this section.

20 (i) This section shall remain in effect only until December 1 of
21 the calendar year after the year of the cutoff date, and as of that
22 December 1 is repealed.

23 SEC. 5. Section 23623 of the Revenue and Taxation Code, as
24 added by Section 8 of Chapter 17 of the Third Extraordinary
25 Session of the Statutes of 2009, is amended to read:

26 23623. (a) For each taxable year beginning on or after January
27 1, 2009, there shall be allowed as a credit against the "tax," as
28 defined in Section 23036, three thousand dollars (\$3,000) for each
29 net increase in qualified full-time employees, as specified in
30 subdivision (c), hired during the taxable year by a qualified
31 employer.

32 (b) For purposes of this section:

33 (1) "Acquired" includes any gift, inheritance, transfer incident
34 to divorce, or any other transfer, whether or not for consideration.

35 (2) "Qualified full-time employee" means:

36 (A) A qualified employee who was paid qualified wages during
37 the taxable year by the qualified employer for services of not less
38 than an average of 35 hours per week.

39 (B) A qualified employee who was a salaried employee and
40 was paid compensation during the taxable year for full-time

1 employment, within the meaning of Section 515 of the Labor Code,
2 by the qualified employer.

3 (3) A “qualified employee” shall not include any of the
4 following:

5 (A) An employee certified as a qualified employee in an
6 enterprise zone designated in accordance with Chapter 12.8
7 (commencing with Section 7070) of Division 7 of Title 1 of the
8 Government Code.

9 (B) An employee certified as a qualified disadvantaged
10 individual in a manufacturing enhancement area designated in
11 accordance with Section 7073.8 of the Government Code.

12 (C) An employee certified as a qualified employee in a targeted
13 tax area designated in accordance with Section 7097 of the
14 Government Code.

15 (D) An employee certified as a qualified disadvantaged
16 individual or a qualified displaced employee in a local agency
17 military base recovery area (LAMBRA) designated in accordance
18 with Chapter 12.97 (commencing with Section 7105) of Division
19 7 of Title 1 of the Government Code.

20 (E) An employee whose wages are included in calculating any
21 other credit allowed under this part.

22 (F) *A full-time employee for which a credit is allowed under*
23 *Section 17053.81 or 23625.*

24 (4) “Qualified employer” means a taxpayer that, as of the last
25 day of the preceding taxable year, employed a total of 20 or fewer
26 employees.

27 (5) “Qualified wages” means wages subject to Division 6
28 (commencing with Section 13000) of the Unemployment Insurance
29 Code.

30 (6) “Annual full-time equivalent” means either of the following:

31 (A) In the case of a full-time employee paid hourly qualified
32 wages, “annual full-time equivalent” means the total number of
33 hours worked for the taxpayer by the employee (not to exceed
34 2,000 hours per employee) divided by 2,000.

35 (B) In the case of a salaried full-time employee, “annual
36 full-time equivalent” means the total number of weeks worked for
37 the taxpayer by the employee divided by 52.

38 (c) The net increase in qualified full-time employees of a
39 qualified employer shall be determined as provided by this
40 subdivision:

1 (1) (A) The net increase in qualified full-time employees shall
2 be determined on an annual full-time equivalent basis by
3 subtracting from the amount determined in subparagraph (C) the
4 amount determined in subparagraph (B).

5 (B) The total number of qualified full-time employees employed
6 in the preceding taxable year by the taxpayer and by any trade or
7 business acquired by the taxpayer during the current taxable year.

8 (C) The total number of full-time employees employed in the
9 current taxable year by the taxpayer and by any trade or business
10 acquired during the current taxable year.

11 (2) For taxpayers who first commence doing business in this
12 state during the taxable year, the number of full-time employees
13 for the immediately preceding prior taxable year shall be zero.

14 (d) In the case where the credit allowed by this section exceeds
15 the “tax,” the excess may be carried over to reduce the “tax” in
16 the following year, and succeeding seven years if necessary, until
17 the credit is exhausted.

18 (e) Any deduction otherwise allowed under this part for qualified
19 wages shall not be reduced by the amount of the credit allowed
20 under this section.

21 (f) For purposes of this section:

22 (1) All employees of the trades or businesses that are treated as
23 related under either Section 267, 318, or 707 of the Internal
24 Revenue Code shall be treated as employed by a single taxpayer.

25 (2) In determining whether the taxpayer has first commenced
26 doing business in this state during the taxable year, the provisions
27 of subdivision—(f) (g) of Section—17276 24416.20, without
28 application of paragraph (7) of that subdivision, shall apply.

29 (g) (1) (A) Credit under this section and Section 17053.80 shall
30 be allowed only for credits claimed on timely filed original returns
31 received by the Franchise Tax Board on or before the cut-off date
32 established by the Franchise Tax Board.

33 (B) For purposes of this paragraph, the cut-off date shall be the
34 last day of the calendar quarter within which the Franchise Tax
35 Board estimates it will have received timely filed original returns
36 claiming credits under this section and Section 17053.80 that
37 cumulatively total ~~four hundred million dollars (\$400,000,000)~~
38 *three hundred fifty million dollars (\$350,000,000)* for all taxable
39 years.

1 (2) The date a return is received shall be determined by the
2 Franchise Tax Board.

3 (3) (A) The determinations of the Franchise Tax Board with
4 respect to the cut-off date, the date a return is received, and whether
5 a return has been timely filed for purposes of this subdivision may
6 not be reviewed in any administrative or judicial proceeding.

7 (B) Any disallowance of a credit claimed due to a determination
8 under this subdivision, including the application of the limitation
9 specified in paragraph (1), shall be treated as a mathematical error
10 appearing on the return. Any amount of tax resulting from such
11 disallowance may be assessed by the Franchise Tax Board in the
12 same manner as provided by Section 19051.

13 (4) The Franchise Tax Board shall periodically provide notice
14 on its Web site with respect to the amount of credit under this
15 section and Section 17053.80 claimed on timely filed original
16 returns received by the Franchise Tax Board.

17 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
18 or procedures necessary or appropriate to carry out the purposes
19 of this section, including any guidelines regarding the limitation
20 on total credits allowable under this section and Section 17053.80
21 and guidelines necessary to avoid the application of paragraph (2)
22 of subdivision (f) through split-ups, shell corporations, partnerships,
23 tiered ownership structures, or otherwise.

24 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
25 Division 3 of Title 2 of the Government Code does not apply to
26 any standard, criterion, procedure, determination, rule, notice, or
27 guideline established or issued by the Franchise Tax Board
28 pursuant to this section.

29 (i) This section shall remain in effect only until December 1 of
30 the calendar year after the year of the cut-off date, and as of that
31 December 1 is repealed.

32 *SEC. 6. Section 23625 is added to the Revenue and Taxation*
33 *Code, to read:*

34 *23625. (a) (1) For each taxable year beginning on or after*
35 *January 1, 2012, there shall be allowed a credit against the "tax,"*
36 *as defined in Section 23036, the amount specified in paragraph*
37 *(2).*

38 *(2) For each qualified full-time employee hired during the*
39 *taxable year by a qualified employer, the credit shall be equal to*
40 *the lesser of five thousand dollars (\$5,000), or five thousand dollars*

1 (\$5,000) multiplied by a fraction, the numerator of which shall be
2 the number of calendar months the qualified full-time employee
3 is employed during the taxable year, and the denominator shall
4 be the total number of calendar months in the taxable year.

5 (b) For purposes of this section:

6 (1) “Qualified employer” means an employer that, as of the
7 last day of the preceding taxable year, employed a total of 20 or
8 fewer employees, and has a net increase in full-time employees,
9 defined as those employees working 2,000 hours per year, for the
10 current taxable year.

11 (A) The net increase in the number of full-time employees shall
12 be determined by subtracting the total number of full-time
13 employees, defined as 2,000 paid hours per employee per year,
14 the employer employed in this state on the last day of the preceding
15 taxable year from the total number of full-time employees the
16 employer employed in this state as of the last day of the current
17 taxable year. For employers who first commence doing business
18 in this state during either the current or preceding taxable year,
19 the number of employees for the taxable year prior to first
20 commencing business operations shall be zero. If the employer
21 has a net increase in the number of full-time employees in this
22 state, the credit shall be allowed only if one or more full-time
23 employees was a qualified employee.

24 (B) The total number of full-time employees shall equal the sum
25 of both of the following:

26 (i) The total number of hours worked by all full-time employees
27 for the taxpayer by employees, not to exceed 2,000 hours per
28 employee, who are paid an hourly wage divided by 2,000.

29 (ii) The total number of months worked for the employer by
30 employees who are salaried employees divided by 12.

31 (C) In the case of an employer that first commences doing
32 business during the taxable year, for purposes of clauses (i) and
33 (ii) of subparagraph (B), the divisors “2,000” and “12” shall be
34 multiplied by a fraction, the numerator of which is the number of
35 months of the taxable year that the employer was doing business
36 and the denominator of which is 12.

37 (2) “Qualified employee” means an individual who was
38 unemployed for 12 or more consecutive months immediately prior
39 to commencing employment with the qualified employer in the
40 taxable year, and who was employed by the qualified employer on

1 *a full-time basis, paid qualified wages, and employed as of the last*
2 *day of the taxable year. For purposes of this paragraph, an*
3 *individual “employed on a full-time basis” shall mean an employee*
4 *who either performed services for the qualified employer for not*
5 *less than an average of 35 hours per week, or who was a salaried*
6 *employee and was paid compensation for full-time employment,*
7 *within the meaning of Section 515 of the Labor Code.*

8 (3) A “qualified employee” shall not include any of the
9 following:

10 (A) An employee certified as a qualified employee in an
11 enterprise zone designated in accordance with Chapter 12.8
12 (commencing with Section 7070) of Division 7 of Title 1 of the
13 Government Code.

14 (B) An employee certified as a qualified disadvantaged
15 individual in a manufacturing enhancement area designated in
16 accordance with Section 7073.8 of the Government Code.

17 (C) An employee certified as a qualified employee in a targeted
18 tax area designated in accordance with Section 7097 of the
19 Government Code.

20 (D) An employee certified as a qualified disadvantaged
21 individual or a qualified displaced employee in a local agency
22 military base recovery area (LAMBRA) designated in accordance
23 with Chapter 12.97 (commencing with Section 7105) of Division
24 7 of Title 1 of the Government Code.

25 (E) An employee whose period of employment was used to
26 calculate a credit under Section 17053.80 or 23623.

27 (F) (i) An employee whose wages are included in calculating
28 any other credit allowed under this part.

29 (ii) Clause (i) shall not apply in any case in which the qualified
30 employer elects to include wages otherwise qualifying for the credit
31 allowed under this section or Section 17053.81 in claiming a credit
32 under another section under this part or Part 11 (commencing
33 with Section 23001) in lieu of claiming a credit under either this
34 section or Section 17053.81.

35 (4) “Qualified wages” means wages subject to Division 6
36 (commencing with Section 13000) of the Unemployment Insurance
37 Code that are no less than the state minimum wage as set forth in
38 Chapter 1 (commencing with Section 1171) of Part 4 of Division
39 2 of the Labor Code.

1 (c) (1) (A) A credit under this section and Section 17053.81
2 shall be allowed only for credits claimed on timely filed original
3 returns received by the Franchise Tax Board on or before the
4 cut-off date established by the Franchise Tax Board and shall be
5 allocated on a first-come-first-served basis.

6 (B) For purposes of this paragraph, the cut-off date shall be
7 the last day of the calendar quarter within which the Franchise
8 Tax Board estimates it will have received timely filed original
9 returns claiming credits under this section and Section 17053.81
10 that cumulatively total fifty million dollars (\$50,000,000) for all
11 taxable years.

12 (2) The date a return is received shall be determined by the
13 Franchise Tax Board.

14 (3) (A) The determinations of the Franchise Tax Board with
15 respect to the cut-off date, the date a return is received, and
16 whether a return has been timely filed for purposes of this
17 subdivision shall not be reviewed in any administrative or judicial
18 proceeding.

19 (B) Any disallowance of a credit claimed due to a determination
20 under this subdivision, including the application of the limitation
21 specified in paragraph (1), shall be treated as a mathematical
22 error appearing on the return. Any amount of tax resulting from
23 such disallowance shall be assessed by the Franchise Tax Board
24 in the same manner as provided by Section 19051.

25 (4) The Franchise Tax Board shall periodically provide notice
26 on its Internet Web site with respect to the amount of credit under
27 this section and Section 17053.81 claimed on timely filed original
28 returns received by the Franchise Tax Board.

29 (d) For purposes of this section:

30 (1) All employees of the trades or businesses that are treated
31 as related under either Section 267, 318, or 707 of the Internal
32 Revenue Code shall be treated as employed by a single taxpayer.

33 (2) In determining whether the employer has first commenced
34 doing business in this state during a taxable year, the provisions
35 of subdivision (g) of Section 24416.20, without the application of
36 paragraph (7) of that subdivision, shall apply.

37 (e) In the case where the credit allowed under this section
38 exceeds the "tax," the excess credit may be carried over to reduce
39 the "tax" in the following taxable year, and succeeding eight
40 taxable years, if necessary, until the credit has been exhausted.

1 (f) (1) *The Franchise Tax Board may prescribe rules,*
2 *guidelines, or procedures necessary or appropriate to carry out*
3 *the purposes of this section, including any guidelines regarding*
4 *the limitation on total credits allowable under this section and*
5 *Section 17053.81.*

6 (2) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
7 *Division 3 of Title 2 of the Government Code does not apply to*
8 *any standard, criterion, procedure, determination, rule, notice, or*
9 *guideline established or issued by the Franchise Tax Board*
10 *pursuant to this section.*

11 (g) *This section shall remain in effect only until December 1 of*
12 *the calendar year after the year of the cut-off date, and as of that*
13 *December 1 is repealed.*

14 ~~SEC. 5.~~

15 SEC. 7. This act provides for a tax levy within the meaning of
16 Article IV of the Constitution and shall go into immediate effect.